

TITLE 16. BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS

NOTICE IS HEREBY GIVEN that the Board of Vocational Nursing and Psychiatric Technicians (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held:

Date: Wednesday, May 11, 2011

Time: 10:00 a.m.

Board for Professional Engineers & Land Surveyors
2535 Capitol Oaks Drive, 3rd Floor Conference Room
Sacramento, California 95833

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 P.M. on **May 9, 2011**, or must be received by the Board at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for fifteen (15) days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 2854 and 4504 of the Business and Professions (B&P) Code; and to implement, interpret or make specific sections 490, 820, 822, 2841.1, 2847, 2866, 2871, 2875, 2876, 2878, 2878.1, 2878.5, 2878.6, 2878.7, 2878.9, 2879, 4501.1, 4503, 4511, 4520, 4521, 4521.1, 4521.2, 4521.6, 4522, 4523 and 4524 of the B&P Code, and Section 6253.4 of the Government Code, the Board is considering changes to Division 25 of Title 16 of the California Code of Regulations (CCR).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Board's highest priority is protection of California consumers. B&P Code sections 2841.1 of the Vocational Nursing (VN) Practice Act and 4501.1 of the Psychiatric Technician (PT) law mandate that the protection of the public shall be the highest priority of the Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

The Board is authorized to investigate the criminal conviction history of applicants and licensees, subsequent arrests, allegations of unprofessional conduct, and unsafe or incompetent practice by licensed vocational nurses and psychiatric technicians. The Board is authorized to discipline licensees and applicants who may jeopardize the health, safety and welfare of the consumer.

B&P Code section 2854 (VN) and section 4504 (PT) authorize the Board to adopt, amend, or repeal, such rules and regulations as may be reasonably necessary to enable it to carry into effect the provisions of the Vocational Nursing Practice Act and the Psychiatric Technicians Law. In order to enhance the Board's consumer protection mandate, the Board is proposing the following changes:

SPECIFIC CHANGES AND FACTUAL BASIS/RATIONALE:

Amend Sections 2503 (VN) and 2563 (PT)

Existing law authorizes the Board to hire an Executive Officer (EO). Existing law authorizes the Board members to approve final action on licensing and disciplinary cases processed using the provisions of

the Administrative Procedure Act, including those proposed through settlement agreement.

Existing regulations delegate certain functions to its EO relative to actions taken in connection with the Administrative Procedures Act.

This regulatory proposal delegates to the EO the authority to approve settlement agreements for the revocation, surrender, or interim suspension of a license.

Add Sections 2509 (VN) and 2568 (PT)

Existing law authorizes the Board to compel a licensed vocational nurse (LVN) or psychiatric technician (PT) to submit to physical or mental health examinations if the licensee's ability to practice in a competent manner may be impaired due to physical or mental illness. Existing regulations do not address physical or mental health examinations for applicants.

This regulatory proposal requires an applicant for a VN or PT license to undergo an evaluation and/or examination if it appears the applicant may be unable to practice due to mental and/or physical illness. The Board is required to pay for the examination.

Add Sections 2518.8 (VN) and 2576.8 (PT)

Existing law authorizes the Board to take disciplinary action against a LVN or PT or to deny an application for licensure due to unprofessional conduct.

This regulatory proposal specifies additional acts that constitute unprofessional conduct as follows: 1) In a civil settlement agreement, including or permitting to be included provisions prohibiting a party in the dispute from contacting, cooperating with, or filing a complaint with the Board, or requiring another party to the dispute to attempt to withdraw any complaint filed with the Board; 2) Failure to provide to the Board lawfully requested documents under the licensee's control, within the specified timeframe; 3) Failure to cooperate and participate in any Board investigation, as long as such action does not infringe upon the licensee's constitutional or statutory privileges; 4) Failure of a licensee to notify the Board within the specified timeframe of felony charges or indictment, arrest, conviction, or disciplinary action by another licensing entity; 5) Failure to comply with a court ordered subpoena to release records.

Renumber and Amend Sections 2524.1 (VN) to 2524.5 and 2579.11 (PT) to 2579.20

Existing law authorizes the Board to state the procedures to be followed when making its records available to the public.

This regulatory proposal will clean up language to clarify that the Board will disclose consumer complaint information and provide a copy of disciplinary documents upon any request from the public rather than only "written" requests. Additionally, this proposed regulatory action will renumber section 2524.1 (VN) and 2579.11 (PT) for organizational purposes.

Add New Sections 2524.1 (VN) and 2579.11 (PT)

Existing law authorizes the Board to deny an application for licensure or discipline a VN or PT license based on a conviction of a crime substantially related to the qualifications, functions or duties of a license.

This regulatory proposal specifies the disciplinary action to be taken against a person who is required to register as a sex offender and specifies when the provision does not apply.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies including Costs or Savings to State Agencies or costs/Savings in Federal Funding to the State: Minor.

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 – 17630 Require Reimbursement: None

Business Impact: The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses: The Board has determined that this proposed regulatory action will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California. By way of its impact on the available workforce, the proposed regulatory action only affects relatively few individual licensees or applicants for licensure who may be unable to practice safely due to physical or mental illness, who are required to register as sex offenders, who have been found to have sexual contact with a patient or who have otherwise violated the Board's laws.

Cost Impact on Representative Private Person or Business: The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to the Board are costs associated with and legal fees if the individual is represented by legal counsel. The impact of a disciplinary order varies and could include loss of employment income, if a license is revoked, surrendered, or suspended.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations will not affect small businesses. The regulatory proposal affects licensed vocational nurses, licensed psychiatric technicians, and applicants for licensure.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board at 2535 Capitol Oaks Drive, Suite 205, Sacramento, California 95833 or on the Board's website listed below.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Linda Ruyters, Administrative Analyst
Address: 2535 Capitol Oaks Drive, Suite 205
Sacramento, CA 95833
Telephone No: (916) 263-7845
Fax No: (916) 263-7859
E-Mail Address: linda.ruyters@dca.ca.gov

The backup contact person is:

Name: Alice Delvey-Williams, Enforcement Program Manager
Address: 2535 Capitol Oaks Drive, Suite 205
Sacramento, CA 95833
Telephone No: (916) 263-7832
Fax No: (916) 263-7857
E-mail Address: alice.delvey-williams@dca.ca.gov

Website Access: Materials regarding this proposal can be found at www.bvnpt.ca.gov